

Appl No. 09/647,575
Amdt. Dated June 14, 2004
Reply to Office Action of February 12, 2004
Attorney Docket No. CM1737
Customer No. 27752

Remarks

Claims 1-3, 11-15, and 17-20 are pending in the present application. No additional claims fee is due.

Response to the Office Action

The Rejection under 35 U.S.C. 103(a) over Noakes in view of Noakes

Claims 1-3, and 11-15 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Noakes et al. (US 6,079,634 – hereinafter, “Noakes ‘634”) in view of Noakes, et al. (US 4,829,996 – hereinafter “Noakes ‘996”). Applicants respectfully traverse this rejection, as the Noakes’ references do not establish a *prima facie* case of obviousness. Specifically, they do not teach or suggest all of Applicants’ claim limitations, as required under MPEP 2143.03. Noakes ‘634 and Noakes ‘996 do not teach or suggest a spray device comprising a spray generator, a fluid reservoir, and a nosepiece, wherein the fluid reservoir contains a pharmaceutically acceptable fluid; and the device is adapted to produce a spray having a fluid ligament extending from the nosepiece, the ligament having a nosepiece end and a delivery end, the spray further comprising a spray cone diverging from the delivery end of the ligament; wherein the ligament has a length of from 1 to 20 mm from the nosepiece end to the delivery end. Therefore, a *prima facie* case of obviousness has not been established.

Noakes ‘634 teaches an electrostatic spraying device suitable for dispensing an electrostatically sprayable substance for nasal or oral inhalation, wherein an electrical charge is imparted to the spray particles by applying a high voltage to the substance prior to break up into a spray. Noakes ‘996 teaches an apparatus in which a spray is formed electrostatically from an outlet to achieve uniform droplet size. Neither Noakes ‘634 nor Noakes ‘996 teaches or suggests a spray device claimed in the present invention. The Office Action states that it would have been obvious to have the length of the ligament from 1 to 20mm. However, to establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). The combination of Noakes ‘634 and Noakes ‘996 does not teach or suggest all of Applicants’ claim limitations. Therefore, Applicants contend that the claimed invention is unobvious and that the rejection should be withdrawn.

The Rejection under 35 U.S.C. 103(a) over Ruderian

Claims 17-20 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Ruderian (US 4,694,824 – hereinafter, “Ruderian”). Applicants respectfully traverse this rejection, as the Ruderian reference does not establish a *prima facie* case of obviousness. Specifically, it does not

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teach or suggest all of Applicants' claim limitations, as required under MPEP 2143.03. Ruderian does not teach or suggest a method of administering a fluid to the nasal cavity from a spray device, the method comprising spraying the fluid into the nasal cavity without substantial penetration of the device into the nostrils, wherein the device sprays simultaneously into two nostrils.

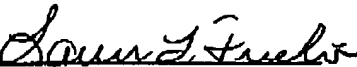
Thus, the Ruderian reference does not teach or suggest all of Applicants' claim limitations. Therefore, Applicants contend that the claimed invention is unobvious and that the rejection should be withdrawn.

Conclusion

Applicants have made an earnest effort to distinguish the present invention from the applied references. WHEREFORE, Applicants respectfully request reconsideration of this application and allowance of Claims 1-3, 11-15, and 17-20.

Respectfully submitted,

Paul John Rennie

By 

Laura L. Frieko
Attorney for Applicants
Registration No. 52,920
(513) 626-2721

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